

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DEVIN E. ANDERSON,

Petitioner,

vs.

STATE OF NEBRASKA, and
NEBRASKA MENTAL HEALTH
BOARD,

Respondents.

8:19CV172

MEMORANDUM AND ORDER

This matter is before the court on Petitioner's motion to proceed in forma pauperis ("IFP") ([filing 10](#)) and motion for the appointment of counsel ([filing 11](#)). Petitioner previously was granted leave to proceed IFP. ([Filing 5](#).) Thus, the court will deny his present IFP motion as moot.

With respect to Petitioner's motion for the appointment of counsel, Petitioner appears to seek the appointment of counsel based on provisions of the Nebraska Sex Offender Commitment Act ("SOCA"), Neb. Rev. Stat. §§ 71-1201 to 71-1226. *See D.I. v. Gibson*, 890 N.W.2d 506, 511 (Neb. 2017) (SOCA authorizes the appointment of counsel for subjects involved in proceedings under the SOCA). However, this is not a proceeding under the Nebraska SOCA, but rather an action for federal habeas relief under 28 U.S.C. § 2254. "[T]here is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment] is committed to the discretion of the trial court." *McCall v. Benson*, 114 F.3d 754, 756 (8th Cir. 1997). As a general rule, counsel will not be appointed unless the case is unusually complex or the petitioner's ability to investigate and articulate the claims is unusually impaired or an evidentiary hearing is required. *See, e.g., Morris v. Dormire*, 217 F.3d 556, 558-59 (8th Cir. 2000), *cert. denied*, 531 U.S. 984 (2000); *Hoggard v. Purkett*, 29 F.3d 469, 471

(8th Cir. 1994). *See also* Rule 8(c) of the *Rules Governing Section 2254 Cases in the United States District Courts* (requiring appointment of counsel if an evidentiary hearing is warranted). The court has carefully reviewed the record and finds there is no need for the appointment of counsel at this time. Petitioner's motion is denied without prejudice to reassertion.

IT IS THEREFORE ORDERED that:

1. Petitioner's motion to proceed IFP ([filing 10](#)) is denied as moot.
2. Petitioner's motion for the appointment of counsel ([filing 11](#)) is denied without prejudice to reassertion.

Dated this 25th day of June, 2020.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge